



SCHOOL OF LAW

Interdisciplinary Environmental Clinic

March 30, 2022

Edie Stevens
FOIA Specialist
EPA Region 7
11201 Renner Boulevard
Lenexa, KS 66219
Submitted via FIOA.gov

Re: Freedom of Information Act Request – Magnitude 7 Metals and the New Madrid County Nonattainment Area for SO₂

Dear Ms. Stevens:

Pursuant to the Freedom of Information Act and on behalf of the Climate Imperative Foundation, the Interdisciplinary Environmental Clinic at Washington University School of Law (“IEC”) requests the following documents submitted to, received by, or generated by EPA Region 7 since January 1, 2015:

1. All documents pertaining to the permits or permit applications for Magnitude 7 Metals’ (“M7M”) operation and construction of its Marston, Missouri aluminum smelter, including any discussions or communications regarding existing Part 70 Operating Permits and Nonattainment New Source Permits and any pending applications. This request includes, but is not limited to, communications and discussions regarding the construction and operating permits previously issued to Noranda Aluminum Inc., the former owner-operator of the facility (“Noranda”), communications with M7M, Noranda, or their representatives regarding such permit applications, and internal EPA communications and discussions regarding the permit(s). Specifically, this request includes documents related to M7M’s pending Part 70 permit application submitted to the Missouri Department of Natural Resources (“MDNR”) on or about January 10, 2019.
2. All emails, text messages, faxes, voicemails, and other forms of discussion, communication, and correspondence regarding the state implementation plan (“SIP”) for the New Madrid County SO₂ nonattainment area and the controls (or lack of controls) used by M7M and AECI New Madrid to address SO₂ emissions.

Such communications, discussions, and correspondence should include

- a. those communications, discussions, and correspondence internal to EPA; and/or
- b. those communications, discussions, and correspondence between EPA and MDNR;
- c. between either EPA or MDNR and the owners, operators, representatives, or agents of M7M; and
- d. between either EPA or MDNR and the owners, operators, representatives, or agents of Associated Electric Cooperative, Inc., New Madrid (“AECI New Madrid”)

For purposes of this request, the term “documents” includes, but is not limited to, memoranda, notes, correspondence, emails, reports, studies, agreements, inspection reports, monitoring data, permits and other information.

On behalf of the Climate Imperative Foundation, the IEC requests a fee waiver under FOIA. The requested information “[1] is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and [2] is not primarily in the commercial interest of [the Climate Imperative].”¹ The Climate Imperative Foundation is a public charity that promotes public policy outcomes which are designed to reduce the effects of climate change, advance equity, and secure a more sustainable future.²

For the following reasons, the Climate Imperative Foundation satisfies the criteria set forth in 40 C.F.R. § 2.107(l) for fee waivers:

1. *The subject of the requested documents concerns “the operations or activities of the government” which are identifiable and clear.*³

The requested records were created or obtained by the EPA – a federal agency – in connection with its implementation, oversight, and enforcement of the Clean Air Act in the state of Missouri.

2. *The information to be disclosed is “‘likely to contribute’ to an understanding of government operations or activities.”*⁴

The requested records will provide valuable information about state and federal government activities related to M7M’s Part 70 permit application pursuant to Title V of the Clean Air Act. Additionally, the requested records will provide information about

1. See 40 C.F.R. §2.107(l)(1).

2 CLIMATE IMPERATIVE, <https://climateimperative.org/>.

3 See 40 C.F.R. §2.107(l)(2)(i).

4 *Id.* at §2.107(l)(2)(ii).

government activities and considerations regarding the development of a state implementation plan for the SO₂ nonattainment area in New Madrid County as well as the controls (or lack of controls) employed to address SO₂ emissions in the area. The requested information is not readily available in the public domain.

Climate Imperative and its partner organizations use their knowledge and technical expertise to inform near-term policy decisions that will have significant impacts on the reduction of greenhouse gas emissions. Access to the requested records will allow Climate Imperative to develop a deeper understanding of how M7M's operations are affecting the air quality standards of the surrounding area and how the State plans to reduce emissions levels to come within attainment. Accordingly, the information to be disclosed is "'likely to contribute' to an understanding of government operations or activities."⁵

3. *The information to be disclosed is likely to contribute to public understanding of the subject matter.*⁶

The Climate Imperative Foundation provides funding, technical support, and expertise to inform important policy decisions that affect the climate.⁷ Climate Imperative partners with expert organizations and shares its knowledge with these organizations in order to advance public health, environmental solutions, and equitable outcomes.

The requested records are important to Climate Imperative and the organizations it works with in their efforts to reduce harmful emissions and improve air quality for the health of local communities. By sharing its findings with its relevant partner organizations, the Climate Imperative can help contribute to public understanding of government activities pertaining to M7M's Part 70 permit application, the development of the new SIP for the SO₂ nonattainment area in New Madrid County, and the control measures used to address SO₂ emissions at M7M and AECI New Madrid.

4. *The contribution to public understanding is likely to be significant.*⁸

Currently, there is limited public understanding about state and federal government activities related to M7M's Part 70 permit application, the development of the SIP for the SO₂ nonattainment area in New Madrid County, and the control measures used by M7M and AECI New Madrid to address SO₂ emissions. Access to public records regarding

⁵ *Id.*

⁶ *See id.* at §2.107(l)(2)(iii).

⁷ CLIMATE IMPERATIVE, <https://climateimperative.org/>.

⁸ *See* 40 C.F.R. §2.107(l)(2)(iv).

these matters is critical for public understanding of government efforts to control air quality conditions affecting the New Madrid County area. Although the MDNR is the lead agency responsible for issuing the Part 70 permit and developing a SIP, the EPA also has an important role in these processes and has information that can support public understanding.

5. *Climate Imperative has no commercial interest in the requested documents.*⁹

As a public charity and tax-exempt 501(c)(3) organization, the Climate Imperative has no commercial interest in the requested documents. Additionally, IEC has no commercial interest in the requested information.

6. *The primary interest in disclosure meets the public interest standard.*¹⁰

Since the Climate Imperative and IEC have no commercial interest in the requested documents, the use of the requested information is primarily in the public interest. The requested documents will allow Climate Imperative to inform its partner organizations and other members of the public of information relating to sources affecting National Ambient Air Quality Standards (“NAAQS”) within the New Madrid County nonattainment area and the steps being taken to improve conditions in the area. In particular, the requested documents will allow Climate Imperative to support public understanding of government activities pertaining to M7M’s Part 70 permit application, the development of a SIP for the New Madrid County nonattainment area, and the controls (or lack thereof) used to address SO₂ emissions at the M7M and AECI New Madrid facilities.

Accordingly, we request a fee waiver pursuant to 40 C.F.R. §2.107(l). Please contact me if you have any questions regarding this request. Thank you in advance for your time and assistance.



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⁹ See 40 C.F.R. §2.107(l)(3)(i).

¹⁰ See 40 C.F.R. §2.107(l)(3)(ii).